



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

JERRY D. OLDS
State Engineer/Division Director

NOV 19

ORDER OF THE STATE ENGINEER

AMENDMENT TO STREAM ALTERATION APPLICATION NUMBER 08-01-01SA

This **ORDER/AMENDMENT** is issued pursuant to statute and in accord with the statutory criteria for approval of a stream alteration application that are described at UTAH CODE ANN. § 73-3-29. The State Engineer has determined that this application does meet the necessary legal criteria to **ORDER** the approval of the application based upon the following information and reasoning set forth in the Facts and Discussion. **The project may proceed according to new information dated November 4 and November 13 and received by this office on November 17, 2008.**

FACTS

1. The application was received by the Division of Water Rights ("Division") on May 19, 2008, and made available for comment on the Division's webpage, provided to adjacent property owners or other individuals who may be affected by this project as identified in the application, pertinent governmental agencies, and to other entities as warranted, for a period of 20 calendar days, said period concluding prior to June 8, 2008.
2. The application contains the following information:
 - The stated purpose of the proposed project is: Realignment of Moab Wash is required to reduce the potential for contaminated materials washing into the Colorado River. The Moab Wash channel will be realigned away from the mill tailings embankment and contaminated materials removed.
 - The stated description of the proposed project is: Planned re-routing of the channel from just below the potash road (SR-279) to the Middle Crossing will be performed to reduce contaminated flow to the Colorado River, and provide adequate sizing of the new channel. The project would realign the wash away from the tailings embankment, reconstruct the wash with clean soils and stabilize the banks with rock riprap, reinforced matting and revegetation.
 - The stated alternatives to the proposed project are: None listed.
3. The Division received comments or objections on the proposed project from:
 - State Division of Forestry Fire and State Lands, Barry Tripp
 - State Historical Preservation Office, Janice Reed-Campbell, Matthew Seddon

The comments or objections received by the Division are summarized as follows:

- The State claims ownership to the Colorado River. The Division of Forestry Fire and State Lands has requested that the applicant contact them for the proper permit. You can contact Barry Tripp for more information at 801-538-5453.
- General cultural resource concerns.



DISCUSSION

1. Based on a review of the Division's water rights records and/or a review of the application by personnel of the Division's regional office, it is the opinion of the State Engineer that the project will not impair vested water rights.
2. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily affect recreational use or the natural stream environment. Although the channel has been determined to be a natural stream, it is predominately a dry wash. This project will likely improve the stream channel environment.
3. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily endanger aquatic wildlife.
4. It is the opinion of the State Engineer that the project will not unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.
5. It is the opinion of the State Engineer that cultural resource impacts can be mitigated through appropriate conditions as set forth below. It is also apparent that the applicant has an MOA with SHPO.
6. Although this appears to qualify under a GP-40, the Corps may have additional concerns, requirements, and/or permitting.

ORDER

Stream Alteration Application No. 08-01-01SA, submitted in the name of U.S. Department of Energy / Donald Metzler, applicant, for stream channel re-alignment and re-habilitation associated with Moab Wash and the Colorado River, natural streams located in Grand County, Utah, is hereby APPROVEDAMENDED, contingent upon the conditions outlined in this **ORDER**. This approval also constitutes compliance with Section 404 (e) of the Clean Water Act (33 USC 1344) pursuant to General Permit 040 issued to the State of Utah by the U.S. Army Corp of Engineers on May 14, 2004. The applicant is hereby authorized to conduct the work detailed in the application and supporting documentation, as described in this **ORDER**. Any modification or addition to the work may require additional authorization and/or application resubmittal.

1. The expiration date of this order is **June 10, 2009**. Work affecting the bed and/or banks of the stream may not be conducted after this date. The expiration date may be extended, at the State Engineer's discretion, by submitting a written request outlining the need for the extension and the reasons for the delay in completing the proposed stream alteration.
2. A copy of this order must be kept onsite at any time the work authorized under this order is in progress.

3. Disturbed areas must be planted with a variety of appropriate vegetation (especially woody vegetation where feasible) to help hold the soil around riprap, prevent excessive erosion, and to help maintain other riverine functions. Successful revegetation efforts must be monitored and reported to this office.
4. Best Management Practices should be implemented and maintained during any streamside or instream work to minimize sedimentation, temporary erosion of stream banks, and needless damage or alteration to the streambed.
5. Approval of this application does not authorize trespass, easements, rights-of-way, or any other access and land use permits. It is the responsibility of the applicant to obtain any such authorizations as may be necessary for this proposal.
6. Excavated material and construction debris may not be wasted in any stream channel or placed in flowing waters, this will include material such as grease, oil, joint coating, or any other possible pollutant. Excess materials must be wasted at an upland site well away from any channel. Construction materials, bedding material, excavated material, etc. may not be stockpiled in riparian or channel areas.
7. Whenever an applicant causes the water turbidity in an adjacent surface water to increase 10 NTU's or more, the applicant shall notify the Division of Water Quality.
8. Erosion control, revegetation, and noxious weed control must be implemented and monitored until revegetation becomes well established. Success of these measures must also be reported prior to the compliance inspection. This is especially important for all disturbed areas, including fill, in order to prevent sediments from entering flowing water. Particular attention is required to assure that silt fencing is properly installed and left in place until after revegetation becomes established at which time the silt fence can then be carefully removed.
9. If historical or archaeological resources such as human remains (skeletons), prehistoric arrowheads/spear points, waste flakes from stone tool production, pottery, ancient fire pits, historical building foundations/remains, historical artifacts (glass, ceramic metal, etc.) are found during construction, the permit holder is advised to cease work and contact the Division of State History at 801-533-3555.
10. Work must be accomplished during a period of low flow. Sediment introduced into stream flows during construction must be controlled to prevent increases in turbidity downstream. Flows must be diverted away from the construction area using a non-erodible cofferdam or other means of bypass.
11. Machinery must be properly cleaned and fueled offsite prior to construction.

12. Riprap must consist of only clean, properly sized angular rock, which must be keyed deeply into the streambed to prevent undercutting. A filter must be placed behind if necessary (i.e., if soils are fine grained, non-cohesive, and/or erodible). Demolition debris or refuse will not be allowed, nor material such as bricks, concrete, asphaltic material [either natural (tar sand, oil shale, etc.) or man made].
13. Cement is toxic to aquatic organisms, and its introduction into waters of the United States would constitute a violation of the Clean Water Act. Cement or concrete may not be allowed to enter stream flows. Water must be excluded from areas where concrete or cement is used until it has set. Contaminated water pumped from the construction area may not be discharged in a manner that will allow it to enter flows. Equipment used during this type of work must be washed well away from the channel.
14. Within 30 days after the completion of this project, the attached compliance certification form must be completed and returned to the U.S. Army Corps of Engineers. Failure to return this compliance certification form would invalidate U.S. Army Corps of Engineers General Permit 040, thereby placing the applicant in violation of Section 404 of the Clean Water Act.

Your contact with the Division is Daren Rasmussen, who can be reached at telephone number 801-538-7414.

This **ORDER** is subject to the provisions of UTAH ADMIN. CODE R. 655-6-17 of the Division of Water Rights and to UTAH CODE ANN. §§ 63-46b-13 and 73-3-14, which provide for persons or parties with legal standing to file either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this **ORDER**. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this **ORDER**, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken within 20 days after the Request is filed.

Dated this 17 day of November, 2008.



David K. Marble, P.E.
Assistant State Engineer

Enclosure


Mailed a copy of the foregoing Order this 17 day of November, 2008, to:

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November 17, 2008

DONALD METZLER
MOAB PROJECT FEDERAL DIRECTOR
US DEPARTMENT OF ENERGY
200 GRAND AVE STE 500
GRAND JUNCTION CO 81501

Nathan Green - Corps of Engineers
Marc Stilson - Regional Engineer
Chris Hunter - EPA
Carolyn Wright - Dept. of Natural Resources
Chris Wood - Regional Wildlife Habitat Manager
Matt Seddon – State History
Ed Baker – Energy Solutions

By:



Judy Mattson
Secretary